

# Settlement Agreement

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## **PARTIES**

Financial Markets Authority

## **FMA**

AIA New Zealand Limited

AIA International Limited

together, **AIA**

## PARTIES

### Financial Markets Authority

a Crown entity established under s 6 of the Financial Markets Authority Act 2011  
("FMA")

### AIA New Zealand Limited

a company having its registered office at AIA House, 74 Taharoto Road, Auckland 0626

### AIA International Limited

an overseas incorporated company having its registered office in New Zealand at  
74 Taharoto Road, Auckland 0626  
(together "AIA")

(collectively, the "Parties").

## AGREEMENT

### 1. INTRODUCTION

- 1.1 The FMA has filed proceedings in the High Court against AIA alleging that AIA made misleading representations in connection with the supply of insurance.
- 1.2 In the Proceeding, the FMA seeks a pecuniary penalty and declarations that the conduct breached s 22 of the Act.
- 1.3 The Parties have reached a settlement regarding the matters remaining to be determined in the Proceeding, on the terms set out in this Agreement.
- 1.4 This agreement may be made public by the FMA (including on the FMA's website) following the public release of the Penalty Judgment.

### 2. INTERPRETATION

- 2.1 For the purposes of this Agreement:

"Act" means the Financial Markets Conduct Act 2013.

"Admitted Causes of Action" means the three causes of action in the Amended Statement of Claim;

"Agreed Recommended Penalty" means the pecuniary penalty set out in clause 4.4(a);

"Agreement" means this settlement agreement and the schedules attached to it;

**"Amended Statement of Claim"** means the amended statement of claim annexed as Schedule 1 to this Agreement;

**"Court"** means the High Court of New Zealand or, on appeal, the Court of Appeal of New Zealand or the Supreme Court of New Zealand;

**"Defaulting Party"** has the meaning as set out in clause 7.1;

**"Default Notice"** means a written notice issued under clause 7.3 by one Party giving notice that the other Party is in breach of the Agreement;

**"Dollar"** amounts stated are New Zealand dollars;

**"Information"** includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic material in relation to the Proceeding;

**"Notice of Admissions"** means the notice of admissions annexed as Schedule 2 to this Agreement;

**"Notifying Party"** has the meaning set out in clause 7.1;

**"Penalty Hearing"** means the hearing or fixture in the Proceeding at which the FMA and AIA will ask the Court to approve the order set out in clause 4.4;

**"Penalty Judgment"** means a judgment of the Court determining the pecuniary penalty payable by AIA in the Proceeding. Where a Penalty Judgment of a particular Court is specified, it is the judgment of that Court;

**"Person"** extends to non-natural persons and includes any association of persons whether incorporated or not;

**"Proceeding"** means the civil proceeding brought by the FMA in the High Court of New Zealand in CIV-2021-404-1222 against AIA, and includes any appeals from that proceeding;

**"Working day"** has the definition set out in r 1.3 of the High Court Rules.

### **3. RESOLUTION**

3.1 The Parties agree to resolve the Proceeding by:

- (a) The FMA filing the Amended Statement of Claim within one working day of the execution of this Agreement;
- (b) The next working day, AIA filing the Notice of Admissions;
- (c) AIA paying any Penalty Judgment; and
- (d) Otherwise on the basis set out in this Agreement.

#### **4. IMPOSITION OF THE AGREED RECOMMENDED PENALTY**

##### **Progression to Penalty Hearing**

- 4.1 On the same day as AIA files the Notice of Admissions referred to at 3.1(b) above, the Parties will file the joint memorandum requesting a penalty hearing in the form attached as Schedule 3 to this Agreement.
- 4.2 The Parties will cooperate and use all reasonable endeavours to ensure that the Penalty Hearing proceeds on the first available date that the Court proposes that is convenient to Counsel.

##### **Consultation on penalty submissions**

- 4.3 The FMA and AIA will:
- (a) circulate to the other a draft of any submissions or memorandum they propose to file in relation to the Agreed Recommended Penalty at least ten working days before that party is to file the submissions or memorandum with the Court;
  - (b) provide any comments on a submission or memorandum received in accordance with clause 4.3(a) not more than five working days after receiving those submissions or that memorandum; and
  - (c) consider in good faith any comments that the other Party may have in connection with the submission or memorandum.

##### **Agreed Recommended Penalty and content of penalty submissions**

- 4.4 The FMA and AIA agree and undertake that:
- (a) the Agreed Recommended Penalty for the Admitted Causes of Action is a final penalty of \$700,000;
  - (b) the Agreed Recommended Penalty is an appropriate pecuniary penalty in view of the conduct and the circumstances;
  - (c) they will make written and oral submissions recommending to the Court that it impose the Agreed Recommended Penalty; and
  - (d) they will otherwise support the Agreed Recommended Penalty before the Court.

##### **Court Costs**

- 4.5 The Parties:
- (a) acknowledge that the final penalty will be first applied to paying the FMA's actual costs in bringing the Proceeding, given the effect of s 493 of the Act; and
  - (b) agree to ask the Court that there be no further order for costs to the FMA.
- 4.6 The Parties agree that neither Party will seek any other costs award in the Proceeding, other than costs arising from any breach of this Agreement and/or following the service of a Default Notice in accordance with clause 7.3.

## **5. CONFIDENTIALITY AND COMMENT**

### **Comment after release of Penalty Judgment**

- 5.1 Subject to clause 5.2, either Party may issue a press release or make a public comment in relation to this Agreement or the outcome of the Penalty Hearing after the public release of any Penalty Judgment.
- 5.2 AIA will not issue any media release or make any public comment permitted by clause 5.1 until after the FMA has made a media release or public comment as permitted by clause 5.1.

### **Principles applying to comments**

- 5.3 In relation to any media release or public comment made by either Party under clause 5.1:
- (a) the parties agree to make only media releases or public comments that reflect the admissions made, relevant context, and the spirit and intent of this Agreement;
  - (b) the Party issuing the press release will provide the content of any media release to the other Party twenty-four hours in advance of the release being published, for the purpose only of allowing the other Party to have advance notice so as to inform its own position (and not for approval)..

## **6. APPEALS FROM THE PENALTY JUDGMENT**

- 6.1 If the Court imposes the Agreed Recommended Penalty, no party may appeal or apply to recall or set aside that Penalty Judgment on the basis that the Agreed Recommended Penalty should not have been imposed.
- 6.2 If, following submissions from the Parties consistent with clause 4.4, the Court imposes a penalty that differs from the Agreed Recommended Penalty, any Party may appeal the Penalty Judgment.
- 6.3 In the event that an appeal is brought under clause 6.2:
- (a) the terms of this Agreement will remain binding on the Parties, including, for the avoidance of doubt, clause 4.4; and
  - (b) the Parties will each bear their own costs on any appeal (subject to any order from the Court directing otherwise), and shall not apply for, or otherwise seek, costs to be ordered against the other.

## **7. NON-COMPLIANCE WITH AGREEMENT**

### **Default Notice for breaches of the Agreement**

- 7.1 If any Party (the Notifying Party) suspects or believes that the other party (the Defaulting Party) is in breach of the Agreement, or will in the future breach the Agreement, the Notifying Party must notify the Defaulting Party in writing:
- (a) of the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will likely occur; and

(b) that the Notifying Party is contemplating issuing a Default Notice.

7.2 After notifying the Defaulting Party, the Notifying Party must:

- (a) give the Defaulting Party a reasonable opportunity to:
  - (i) respond to the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will occur; and
  - (ii) take steps to remedy any breach of the Agreement that has occurred or would otherwise occur; and
- (b) have regard to the Defaulting Party's response, the nature of the suspected breach and the remedial action taken, if any.

7.3 If the Notifying Party has followed the process in clauses 7.1 and 7.2, and the Defaulting Party fails to comply with any term of this Agreement, the Notifying Party may give written notice that the Defaulting Party is in breach of the Agreement (a Default Notice).

7.4 Following service of a Default Notice, the Notifying Party may:

- (a) take any further steps in or relating to the Proceeding, including taking steps in accordance with clause 6 applying to set aside or appeal the Penalty Judgment;
- (b) take any steps to enforce the obligations outlined in this Agreement;
- (c) seek an award of costs in respect of the matter giving rise to the Default Notice; or
- (d) terminate the Agreement.

7.5 Upon termination of the Agreement, both Parties shall be released from any further obligations in relation to it and the position of both Parties in the Proceedings shall be at large (including for the avoidance of doubt as to amendment of the pleadings inconsistent with the Amended Statement of Claim attached in Schedule One, the withdrawal of the admissions set out in the Notice of Admissions set out in Schedule Two, or the imposition of a pecuniary penalty or other orders inconsistent with this Agreement).

7.6 The Parties agree that it shall not constitute a breach of this Agreement for either of them to make submissions in any Court in any other proceedings with respect to the relevance, weight or precedent value to be attributed to the Penalty Judgment.

#### **Effect of Default Notice on Penalty recommendation**

7.7 If a Default Notice has been given by the FMA, in any subsequent penalty hearing in the Proceeding the FMA may submit that:

- (a) the Agreed Recommended Penalty included discounts for cooperation, remorse and cost savings to the public;
- (b) the breach of the Agreement demonstrates:
  - (i) a lower level of cooperation by that party;
  - (ii) a lack of remorse on behalf of that party;

- (iii) reduced cost savings to the public;
- (c) the Court should impose a higher pecuniary penalty than the Agreed Recommended Penalty to reflect an appropriate, lower level of discount.

## **8. GENERAL**

### **Entire Agreement**

- 8.1 This Agreement constitutes the entire understanding and agreement between the Parties in relation to the Proceeding, and fully supersedes any and all prior agreements, arrangements, representations or understandings (whether orally or in writing) between the Parties pertaining to the Proceeding.
- 8.2 The Parties represent and agree that:
  - (a) no oral contracts, arrangements, understandings, agreements or promises contrary to the terms of this Agreement exist;
  - (b) they have carefully read and fully understand all of the provisions of this Agreement, including the Schedules; and
  - (c) they are each voluntarily entering into this Agreement after having received independent legal advice.

### **Use and disclosure of Information**

- 8.3 The FMA acknowledges that the AIA information may be confidential and/or commercially sensitive and/or subject to privilege.
- 8.4 The FMA may use Information provided by AIA for the purpose of carrying out the FMA's functions or obligations under the Financial Markets Authority Act 2011, but may not disclose such Information to any third party other than:
  - (a) with AIA's prior written consent;
  - (b) as required by law (including, for the avoidance of doubt, to comply with a request made under the Official Information Act 1982 or the Privacy Act 1993); or
  - (c) pursuant to section 30 of the Financial Markets Authority Act 2011.

### **Amendments in writing**

- 8.5 No amendment to this Agreement will be effective unless it is in writing and signed by all Parties.

### **Authorities**

- 8.6 Each person executing this Agreement warrants that he or she has the full authority to enter into this Agreement and bind the party for which he or she purports to enter into this Agreement.

### **Severance**

- 8.7 Any provision in this Agreement that is unlawful will be severed and the remaining provisions remain enforceable, but only if the severed provision is not material to the purpose of this Agreement.

### **Parties to bear their own costs**

- 8.8 Each party will meet its own expenses incurred in the course of performing its obligations under this Agreement.

### **Governing law**

- 8.9 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.

### **Further Assurances**

- 8.10 The Parties agree to make all applications, execute all documents and do all acts and things as may be necessary to give effect to its obligations under this Agreement.

### **No waiver**

- 8.11 Failure by a Party to enforce any provision of this Agreement at any time will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.

### **Counterparts**

- 8.12 The Parties may enter into this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single, binding and enforceable Agreement.

## **9. COMMUNICATIONS**

- 9.1 Any notice or communication pursuant to this Agreement will be delivered as follows:

- (a) if addressed to the FMA, by hand delivery or email to the following address:

**Financial Markets Authority**

Level 5  
Ernst & Young Building  
2 Takutai Square, Britomart  
Auckland

**Attention:** Liam Mason, General Counsel  
**Email:** liam.mason@fma.govt.nz

**Copy to:**

**Meredith Connell**

Level 5  
4 Graham Street  
Auckland

**Attention:** Nick Flanagan | Ben Thompson | Chloe Fleming  
**Email:** nick.flanagan@mc.co.nz | ben.thompson@mc.co.nz |  
chloe.fleming@mc.co.nz

(b) If addressed to AIA, by hand delivery or email to the following address:

**Russell McVeagh**  
Level 30  
48 Shortland Street  
Auckland

**Attention:** Polly Pope | Will Irving  
**Email:** polly.pope@russellmcveagh.com |  
will.irving@russellmcveagh.com

**Copy to:**

**AIA New Zealand Limited**  
**AIA International Limited**  
AIA House  
74 Taharoto Road  
Auckland 0626

**Attention:** Kristy Redfern  
General Counsel and Company Secretary  
**Email:** kristy.redfern@aia.com

## EXECUTION

**SIGNED** by and on behalf of **FINANCIAL  
MARKETS AUTHORITY**



\_\_\_\_\_  
Signature of Authorised Signatory

Rob Everett

\_\_\_\_\_  
Name of Authorised Signatory

In the presence of:



\_\_\_\_\_  
Signature of witness

Caroline Campbell

\_\_\_\_\_  
Name of witness

Executive Assistant

\_\_\_\_\_  
Occupation

Napier

\_\_\_\_\_  
City/town of residence

**SIGNED** by and on behalf of **AIA NEW  
ZEALAND LIMITED**

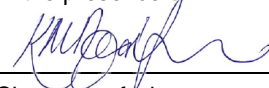


\_\_\_\_\_  
Signature of Authorised Signatory

Nicholas Stanhope

\_\_\_\_\_  
Name of Authorised Signatory

In the presence of:



\_\_\_\_\_  
Signature of witness

Kristy Redfern

\_\_\_\_\_  
Name of witness

General Counsel & Company Secretary

\_\_\_\_\_  
Occupation

Auckland

\_\_\_\_\_  
City/town of residence

**SIGNED** by and on behalf of **AIA**  
**INTERNATIONAL LIMITED**



Signature of Authorised Signatory

Mitch New

Name of Authorised Signatory

In the presence of:



Signature of witness

Susan Ng

Name of witness

Executive Secretary

Occupation

Singapore

City/town of residence

**In the High Court of New Zealand  
Auckland Registry**

**I Te Kōti Matua O Aotearoa  
Tāmaki Makaurau Rohe**

CIV-2021-404-1222

**Under** The Financial Markets Conduct Act 2013

**Between** **Financial Markets Authority** a Crown entity established under s 6 of the Financial Markets Authority Act 2011 having its offices at Level 2, 1 Grey Street, Wellington; and Level 5, Ernst & Young Building, 2 Takutai Square, Britomart, Auckland

**Plaintiff**

**And** **AIA New Zealand Limited** an incorporated company having its registered office at AIA House, 74 Taharoto Road, Takapuna, Auckland 0622

**First Defendant**

**And** **AIA International Limited** an overseas incorporated company having its principal place of business in New Zealand at AIA House, 74 Taharoto Road, Takapuna, Auckland 0622

**Second Defendant**

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**Amended statement of claim**

**[ ] October 2021**

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**MEREDITH  
CONNELL**

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DX CP24063  
T: +64 9 336 7500  
Nick.Flanagan@mc.co.nz |  
Ben.Thompson@mc.co.nz |  
Chloe.Fleming@mc.co.nz

# Amended statement of claim

The plaintiff by its solicitor says:

## The Parties

- 1 The plaintiff, the Financial Markets Authority, is a Crown Entity established under s 6 of the Financial Markets Authority Act 2011. Its functions include enforcement of the Financial Markets Conduct Act 2013 (**FMCA**).
- 2 The first defendant, AIA New Zealand Limited (company number 352806):
  - (a) is an incorporated company having its registered office at AIA House, 74 Taharoto Road, Takapuna, Auckland 0622;
  - (b) was incorporated on 8 September 1987;
  - (c) is a licensed insurer under s 19 of the Insurance (Prudential Supervision) Act 2010;
  - (d) on or about 1 January 2020 received a business transfer of the assets and liabilities of the New Zealand branch of the second defendant; and
  - (e) is in trade in New Zealand.
- 3 The second defendant, AIA International Limited (company number 583021):
  - (a) is an overseas incorporated company having its registered office at Clarendon House, 2 Church Street, Hamilton, HM 11, Bermuda;
  - (b) is registered in New Zealand under Part 18 of the Companies Act 1993 with its principal place of business in New Zealand at AIA House, 74 Taharoto Road, Takapuna, Auckland 0622;
  - (c) was a licensed insurer under s 19 of the Insurance (Prudential Supervision) Act 2010 until its licence was cancelled at its own request effective 8 July 2020;
  - (d) has carried on business in New Zealand under the trading name “AIA New Zealand”;
  - (e) on or about 1 January 2020, completed a business transfer of the assets and liabilities of the insurance business of its New Zealand branch to the first defendant;
  - (f) on or about 10 May 2021, gave notice of its intention to cease carrying on business in New Zealand pursuant to s 341 of the Companies Act 1993.
- 4 The first and second defendants (together, **AIA**) are both ultimately held by AIA Group Limited, an overseas company having its registered office at 35/F AIA Central, No 1 Connaught Road Central, Hong Kong.

## AIA's insurance services

- 5 AIA is New Zealand's largest life insurance company and part of one of the largest insurance groups in the world.
- 6 In the course of AIA's business, it:
- (a) enters into contracts of insurance with individuals or companies based in New Zealand (**Customers**) (**Policies**);
  - (b) administers those Policies, including by:
    - (i) communicating their terms to Customers, including in:
      - (A) documents that contain the terms of the Policy (**Policy Documents**); and
      - (B) letters advising of any terms that are amended from time to time;
    - (ii) annually renewing some Policies in accordance with their terms, including by recalculating the sum insured (**Cover**) and (in some circumstances) the premium payable (**Premium**);
    - (iii) annually advising each Customer of the Cover and Premium under his or her Policy for the next yearly term;
    - (iv) assessing claims made by Customers and either declining or accepting those claims; and
    - (v) paying out accepted claims; and
  - (c) promotes Policies to existing and prospective Customers,

save that as at 1 January 2020, the second defendant no longer carries out these insurance business activities in New Zealand.

### Particulars

Since at least as early as 1995, AIA has issued one or more of the following types of Policies:

- (d) Life insurance, which provides a monthly or lump sum payment in the event of the death of the insured Customer.
- (e) Income protection insurance, which provides ongoing monthly payments if the insured Customer is unable to work due to illness or injury.
- (f) Trauma insurance, previously known as "Vital Care" insurance, which provides a lump sum payment if the insured Customer suffers from a traumatic event, as defined within the Policy.

- (g) Business insurance, which provides monthly payments to the insured Customer for business interruption if the Customer or a key person in the business becomes seriously ill, is injured or dies.
- (h) Total permanent disablement insurance, which provides a lump sum payment if the insured Customer is disabled to the extent that they are not able to work or perform certain activities of daily living.
- (i) Health insurance.

#### **AIA's Policies are renewed annually**

- 7 In general, each Benefit a Customer has under a Policy issued by AIA automatically renews each year on the anniversary of the date on which the Policy was originally issued (**Anniversary Date**) until either:
  - (a) the Customer or AIA cancels the Benefit; or
  - (b) the termination date specified in the Benefit (**Termination Date**), or a termination event, such as death.
- 8 Approximately two months before a Policy's Anniversary Date, AIA recalculates the Cover and the Premium for each Benefit under the Policy for the next year in accordance with its terms.

#### **Anniversary Letters**

- 9 Approximately two months before a Policy's Anniversary Date, AIA sends an anniversary letter to the Customer (**Anniversary Letter**).
- 10 The Anniversary Letter sets out key terms of the Policy for the forthcoming year, including:
  - (a) the Cover;
  - (b) the Premium; and
  - (c) where applicable, certain changes to the terms of the Policy.
- 11 The Anniversary Letter represents that the amount of the Cover and the Premium set out in it is the amount of Cover the Customer has, and the amount of the Premium owing, for each Benefit under that Policy.

#### **Policy Administration System**

- 12 At all material times, AIA has used computer systems to undertake some automated actions in respect of some Policies (**Policy Administration Systems**), such as:
  - (a) calculating and charging Premiums;
  - (b) calculating Cover; and

- (c) providing a trigger for communications regarding both to be sent to Customers.

## **AIA misled Customers as to Passback Benefits**

- 13 A passback benefit is a change made to the terms of an existing Policy which enhances a Customer's Cover under it.
- 14 Between 2013 and 2015, AIA sent Anniversary Letters to Customers who held Trauma Policies which stated that AIA had "automatically" added certain passback benefits to those Customers' Policies (**Passback Letters**).

- 15 The Passback Letters used a standard template which stated:

### **Even more benefits**

AIA's Trauma Cover is now even more comprehensive.

*For claimable events that first occur after 12 November 2012*

Two new conditions are covered: dementia and malignant melanoma. Cover has been improved for conditions such as critical cancer, heart attack and Alzheimer's disease and we now provide an advance partial payment for Parkinson's disease, muscular dystrophy and a number of other conditions.\*

*For claimable events that first occur after 1 February 2012*

A full benefit can also be claimed for intensive care treatment or a diagnosis of meningitis meningococcal disease. A partial benefit is now also provided for conditions such as adult insulin diabetes mellitus and heart valve replacement - giving you more protection.\*

We've added these benefits automatically to your policy, so there's nothing more you need to do.

...

\*Note: This is a summary only. Please refer to the updated policy wordings for full details.

- 16 Each Passback Letter was a representation that AIA had automatically added various benefits referred to in the Passback Letters (**Passback Benefits**) to the terms of the Customer's Policy, and that the Passback Benefits applied retrospectively to claimable events occurring after either 12 November 2012 or 1 February 2012.
- 17 In fact, Customers whose Trauma Policies pre-dated 1 January 2003 did not have the Passback Benefits added automatically to their Policy.
- 18 Between about 23 January 2013 and 20 February 2015, AIA sent Passback Letters to around 2,800 such Customers including as follows:
- (a) on or about 23 January 2013, to Mr B M;
  - (b) on or about 24 January 2013, to Mr J and Mrs S H;
  - (c) on or about 1 February 2013, to Mrs K and Mr S C;
  - (d) on or about 21 March 2013, to Dr J K and Mr G R;

- (e) on or about 15 April 2013, to Mr G B;
  - (f) on or about 24 March 2014, to Mr B and Mrs J B;
  - (g) on or about 16 April 2014, to Mrs T and Mr W W;
  - (h) on or about 12 June 2014, to Mrs J M;
  - (i) on or about 30 October 2014, to Mr P and Mrs J B;
  - (j) on or about 14 November 2014, to Ms E V O;
  - (k) on or about 13 January 2015, to Mrs G M; and
  - (l) on or about 20 February 2015, to Ms J J.
- 19 At least five Customers whose Trauma Policies pre-dated 1 January 2003 made claims for the Passback Benefits which were wholly or partially declined on the basis that the terms of their Policies did not include such Benefits. Had they been entitled to the Passback Benefits, those five customers would have been paid a further combined \$215,753.93 in Benefits.
- 20 Four of the five Customers referred to at paragraph 19 above received at least one Passback Letter after 1 April 2014. AIA would have paid those four customers a further combined \$125,414.55 in Benefits had the Passback Benefits applied.
- 21 One of the four Customers referred to at paragraph 20 above received at least one Passback Letter before making a claim for a Passback Benefit.

#### **AIA misled consumers as to termination of Benefits**

##### ***Termination Dates***

- 22 Certain of AIA's Benefits, including particular income protection Benefits, variously specify the Termination Date as one of the following:
- 23 the date on which the Customer reaches an upper age limit (**Attainment Date**), being an **Age Limited Benefit**; or
- (a) the first Anniversary Date:
  - (b) upon the passing of a specified number of years; or
  - (c) following the Attainment Date,
- (Final Anniversary Date).**
- 24 After the Termination Date, the Benefit reaches "maturity" and no longer confers any rights or benefits on the Customer (**Mature Benefit**).
- 25 Under a Mature Benefit, the Customer is no longer:
- (a) required to pay Premiums to AIA for that Benefit;

- (b) entitled to Cover under that Benefit, including:
  - (i) any new claims; and
  - (ii) where AIA accepted a claim before the Termination Date and that included ongoing payments, any further ongoing payments.

**Penultimate Anniversary Letters were incorrect**

- 26 For Age Limited Benefits, the last Anniversary Letter issued by AIA before the Attainment Date (**Penultimate Anniversary Letter**) represented the following:
- (a) the status of the Benefit was “In-Force”;
  - (b) the amount of the monthly Premium payable for the year from the coming Anniversary Date (which was calculated as if the Policy remained in force until the subsequent Anniversary Date); and
  - (c) that Cover would be in force for the year from the coming Anniversary Date.
- 27 By issuing the Penultimate Anniversary Letter, AIA wrongly represented that after the Attainment Date and until the next Anniversary Date:
- (a) the Benefit would continue to be in force;
  - (b) the Customer had Cover under the Benefit; and
  - (c) the Customer was required to pay the amount of the Premium stated.
- 28 Since before 2009, AIA issued Penultimate Anniversary Letters for Age Limited Benefits that wrongly informed Customers that their Benefits would terminate on the Final Anniversary Date, when in fact the terms of those Customers’ Policies provided that they terminated on the Attainment Date, including as follows:
- (a) on or about 16 January 2009, AIA sent an Anniversary Letter to Ms B B;
  - (b) on or about 3 November 2011, AIA sent an Anniversary Letter to Mr R L;
  - (c) on or about 13 August 2013, AIA sent an Anniversary Letter to Mr G L;
  - (d) on or about 20 August 2015, AIA sent an Anniversary Letter to Mr G C;
  - (e) on or about 13 October 2017, AIA sent an Anniversary Letter to Mr R H;
  - (f) on or about 12 January 2019, AIA sent an Anniversary Letter to Ms V M; and
  - (g) on or about 24 March 2020, AIA sent an Anniversary Letter to Ms L M.
- 29 AIA issued incorrect and misleading Penultimate Anniversary Letters in relation to at least 248 Policies. Customers paid a total of \$305,421 in Premiums for those Policies after the Policies had terminated.

- 30 Since 1 April 2014, AIA has issued incorrect and misleading Penultimate Anniversary Letters to at least 137 Customers. Customers paid a total of \$184,272 in Premiums for those Policies after the Policies had terminated.

**AIA collected Premiums under Mature Benefits**

- 31 As a result of the representations in the incorrect and misleading Penultimate Anniversary Letters, certain Customers with Age Limited Benefits continued to pay Premiums to AIA after the Attainment Date despite their Benefits no longer being in force.
- 32 Since 1 April 2014, AIA has collected a total of at least \$184,272 in Premiums paid by Customers under Mature Benefits.

**AIA ceased Cover while Benefits remained in force**

- 33 Under some AIA Benefits, such as income protection insurance, a valid claim can result in regular ongoing payments (**Ongoing Payments**).
- 34 If AIA accepts a Customer's claim, AIA will make Ongoing Payments to the Customer until either:
- (a) the Termination Date of the Customer's Benefit; or
  - (b) the occurrence of some other event specified in the Policy.
- 35 Between 11 December 2015 and 2 December 2019, AIA sent letters to three Customers that represented that their Ongoing Payments would cease on the Attainment Date when, pursuant to the Customers' policies, their Benefits remained in force until the Final Anniversary Date, as follows:
- (a) On or about 17 January 2014, AIA sent a letter to Mrs W V advising that the "final payment" under her income protection Policy would cover the period ending on 22 January 2014, which was the day before Mrs V's 65th birthday. In fact:
    - (i) Mrs V was entitled to Ongoing Cover until the Final Anniversary Date of her Policy, which was 6 November 2014; and
    - (ii) AIA owed Mrs V a further \$32,463.21 in Ongoing Cover.
  - (b) On or about 24 January 2014, AIA sent a letter to Mr J F advising that his entitlement to Ongoing Cover under his income protection Policy was to expire and his "claim is to close on 12.03.2014 as you will be turning 65 on 13.03.2014". In fact:
    - (i) Mr F was entitled to Ongoing Cover until the Final Anniversary Date of his Policy, which was 27 November 2014; and
    - (ii) AIA owed Mr F a further \$22,854.68 in Ongoing Cover.
  - (c) On or about 11 December 2015, AIA wrote to Mrs A T enclosing a Continuing Claim Form for her completion after she turned 65 years old on 8 April 2016. In fact:

- (i) Mrs T remained entitled to Ongoing Payments until the Final Anniversary Date, which was 7 December 2016; and
  - (ii) AIA owed Mrs T a further \$19,104.36 in Ongoing Payments.
- (d) On or about 24 September 2015, AIA sent a letter to Mr K D advising that the “final payment” under his income protection Benefit would cover the period ending 15 March 2016 “as you turn 65 on 16.03.2016”. In fact:
- (i) Mr D was entitled to Ongoing Payments until the Final Anniversary Date; and
  - (ii) AIA owed Mr D a further \$22,024.66 in Ongoing Payments.
- (e) On or about 2 December 2019, AIA sent a letter to Mr K M advising that he had Cover for a stroke for only 6 days, from 16 November 2019 until 22 November 2019, “as your Income Protection benefit terminates at age 65”. In fact:
- (i) Mr M was entitled to Ongoing Payments until the Final Anniversary Date, which was 16 November 2020; and
  - (ii) AIA owed Mr M a further \$46,044.00 in Ongoing Payments,
- (together, **Cover Cessation Letters**).

- 36 Between 17 January 2014 and 2 December 2019, AIA ceased making Ongoing Payments for the five Customers referred to at paragraph 33 above on the basis that the relevant Benefit had terminated, when in fact the Benefit remained in force and the Customer remained entitled to Ongoing Payments.
- 37 As a result AIA underpaid the five Customers referred to at paragraph 35 above a total of around \$142,490.91 in Ongoing Cover payments, and the three latter customers a total of around \$87,173.02.

## **AIA misrepresented Inflation Adjustments to Premiums**

### **Cover may include an annual inflation adjustment**

- 38 For some Insurance Policies, Customers can elect to have their Cover adjusted annually for inflation.
- 39 If a Customer elects to have their Cover adjusted for inflation, AIA incorporates the Consumer Price Index (**CPI**) increase into its annual recalculation of the Customer’s Cover (**Inflation Adjustment**). The CPI increase is calculated by Statistics New Zealand each year and is stated as a percentage.

### **Inflation Adjustments impact Premiums**

- 40 AIA uses a formula to recalculate a Customer’s Premium annually. The amount of the Customer’s Cover is a factor (among others) in that formula.

- 41 As a result, if the Customer's Cover incorporates an Inflation Adjustment, that Inflation Adjustment is reflected in the Premium.

#### **Information provided to Customers about Inflation Adjustments**

- 42 Where applicable, AIA's Policy Documents include terms setting out that, if a Customer elects to have Inflation Adjustments:
- (a) the Customer's Cover will increase on each Anniversary Date by an amount equal to the CPI increase for the year immediately preceding the Anniversary Date; and
  - (b) there will be a corresponding increase in the Customer's annual Premium.
- 43 At all material times, Anniversary Letters sent to Customers who have elected an Inflation Adjustment stated that:
- (a) Cover has been adjusted in line with the specified CPI increase for that year; and
  - (b) changes to Premiums may be due to an Inflation Adjustment.
- 44 AIA does not otherwise inform Customers of:
- (a) the dollar value of the Inflation Adjustment; or
  - (b) the proportion of any Premium increase that is attributable to an Inflation Adjustment.

#### **AIA incorrectly applied Inflation Adjustments**

- 45 In around December 2014, AIA made a change to its Policy Administration System. In doing so, AIA caused the System to incorrectly apply the Inflation Adjustment, instead of doing so in accordance with the terms of the Policies of Customers who had elected an Inflation Adjustment (**CPI Error**).
- 46 Between about December 2014 and October 2015, certain Customers who had elected an Inflation Adjustment received Anniversary Letters that represented that the amount of the Cover and Premium stated in the Anniversary Letter was:
- (a) calculated in accordance with the terms of the Policy, when it was not; and
  - (b) set by application of the CPI, when it was not,
- (together, **Incorrect Inflation Adjustment Notifications**).
- 47 Those Customers had no way of knowing that CPI Error had occurred and that their Cover and Premium had not been calculated in accordance with the terms of their Policy.
- 48 In around February 2015, AIA became aware of the CPI Error.
- 49 AIA corrected the cause of the CPI Error in October 2015.

- 50 In March 2018, AIA identified that there were some customers impacted by the CPI Error who may not have been remediated by the fixes applied in October 2015.
- 51 Between March 2018 and March 2020, AIA reviewed in-force and lapsed policies to identify those Customers who had not been remediated by the fixes applied in October 2015.
- 52 By May 2019, AIA had identified that a total of 520 in-force Policies had been impacted by the CPI Error. AIA remediated 357 of those in-force Policies when it applied the fixes in October 2015.
- 53 AIA later identified that 92 lapsed Policies had also been impacted by the CPI Error.
- 54 AIA identified that a total of 239 Customers impacted by the CPI Error had not been remediated by the fixes applied in October 2015, and whose Cover and Premiums had not been returned to the correct level.
- 55 Between about October 2015 and 1 February 2020, the 239 customers referred to at paragraph 54 received Anniversary Letters that recorded amounts of Cover and Premium that were not calculated in accordance with the terms of the Policy, because of the CPI Error (**Subsequent Incorrect Inflation Adjustment Notifications**).
- 56 AIA sent approximately 720 Incorrect Inflation Adjustment Notifications and Subsequent Incorrect Inflation Adjustment Notifications to those 239 customers, including as follows:
- (a) on or about 13 October 2015, to Mr N P;
  - (b) on or about 15 October 2015, to Mr S and Mrs A C;
  - (c) on or about 6 January 2016, to Ms S L;
  - (d) on or about 13 October 2017, to Mrs J and Mr P C;
  - (e) on or about 12 October 2018, to Mr G Y;
  - (f) on or about 10 January 2019, to Mrs Y C; and
  - (g) on or about 1 February 2020, to Mrs E and Mr C G.
- 57 Those 239 Customers were overcharged approximately \$21,606 in total because of the CPI Error.

### **AIA's knowledge of the issues**

- 58 AIA first identified:
- (a) the Passback Letters issue described at paragraphs 13 to 19 above in around May 2019;
  - (b) the Termination Date issues described at paragraphs 22 to 37 above in around February 2011; and

- (c) the Inflation Adjustment issue described at paragraphs 38 to **Error! Reference source not found.** above in around February 2015.
- 59 In June 2018, the FMA and the Reserve Bank of New Zealand commenced a joint review into the conduct and culture of life insurance providers, one of which was AIA (**Conduct and Culture Review**).
- 60 During the Conduct and Culture Review, AIA advised the FMA of the Passback Letters issue, the Termination Dates issue and the Inflation Adjustment issue (**Issues**).
- 61 Since around April 2019, AIA has engaged with the FMA on the Issues, including remediation of affected customers.

#### **Particulars**

- (a) AIA has reported on the Issues to the FMA, including by providing further documentation to the FMA, on 10 April 2019, 31 May 2019, 28 June 2019, 4 November 2019, 27 February 2020, 4 August 2020, 18 March 2021, 24 March 2021, 6 May 2021 and 20 May 2021.
  - (b) On 18 February 2020, the FMA interviewed two AIA staff.
- 62 On or about 4 August 2020, AIA advised the FMA that it had completed its investigations into and remediations of the Passback Letters issue and the Inflation Adjustment issue.
- 63 On or about 14 June 2021, AIA advised the FMA that it had completed its investigations into and remediations of the Termination Date issues.

#### **First cause of action: Passback benefits**

- 64 The plaintiff repeats paragraphs 1 to 19 above.
- 65 AIA issued the Passback Letters in connection with the supply of financial services, namely the supply of insurance services.
- 66 By issuing the Passback Letters dated on or after 1 April 2014, AIA made false and/or misleading representations:
- (a) that Customers were entitled to certain Passback Benefits under the relevant Policies, in breach of s 22(d) of the FMCA;
  - (b) that Customers had the right to claim Cover in relation to those Passback Benefits, in breach of s 22(h) of the FMCA.

#### **Accordingly, the plaintiff seeks:**

- A. a declaration that AIA contravened ss 22(d) and/or (h) of the FMCA by issuing the Passback Letters dated on or after 1 April 2014;
- B. an order under s 489 of the FMCA that AIA pay a pecuniary penalty to the Crown; and

- C. an order under s 493 of the FMCA that the pecuniary penalty be first applied to the FMA's actual costs in bringing the proceedings.

## **Second cause of action: Age Termination**

- 67 The plaintiff repeats paragraphs 1 to 12 and 22 to 37 above.
- 68 AIA issued the Penultimate Anniversary Letters and Cover Cessation Letters in connection with the supply of financial services, namely the supply of insurance services.
- 69 By issuing the Penultimate Anniversary Letters dated on or after 1 April 2014, AIA made false and/or misleading representations:
- (a) that Customers had agreed to acquire Cover under the relevant Policies until the Final Anniversary Dates of those Policies, in breach of s 22(c) of the FMCA;
  - (b) that Customers were entitled to certain benefits under the relevant Policies until the Final Anniversary Dates of those Policies, in breach of s 22(d) of the FMCA;
  - (c) as to the price of those Policies, in breach of s 22(f) of the FMCA;
  - (d) that Customers had the right to Cover under the relevant Policies until the Final Anniversary Dates of those Policies, in breach of s 22(h) of the FMCA; and/or
  - (e) that AIA had the right to charge Premiums under the relevant Policies until the Final Anniversary Dates of those Policies, in breach of s 22(h) of the FMCA.
- 70 By issuing the Cover Cessation Letters dated on or after 1 April 2014, AIA made false and/or misleading representations that Customers no longer had the right to claim or receive Ongoing Payments under the relevant Policies, in breach of s22(h) of the FMCA.

### **Accordingly, the plaintiff seeks:**

- A. a declaration that AIA contravened ss 22(c), (d), (f), and/or (h) of the FMCA by issuing the Penultimate Anniversary Letters;
- B. a declaration that AIA contravened s 22(h) of the FMCA by issuing the Cover Cessation Letters;
- C. an order under s 489 of the FMCA that AIA pay a pecuniary penalty to the Crown; and
- D. an order under s 493 of the FMCA that the pecuniary penalty be first applied to the FMA's actual costs in bringing the proceedings.

### **Third cause of action: Inflation Adjustments**

- 71 The plaintiff repeats paragraphs 1 to 12 and 38 to **Error! Reference source not found.** above.
- 72 AIA issued the Incorrect Inflation Adjustment Notifications and the Subsequent Inflation Adjustment Notifications in connection with the supply of financial services, namely the supply of insurance services.
- 73 By issuing the Incorrect Inflation Adjustment Notifications and the Subsequent Inflation Adjustment Notifications, AIA made false and/or misleading representations:
- (a) as to price (being the Premiums), in breach of s 22(f) of the FMCA; and/or
  - (b) that AIA was entitled to charge the Premiums specified in the Inflation Adjustment Notifications, in breach of s 22(h) of the FMCA.

#### **Accordingly, the plaintiff seeks:**

- A. a declaration that AIA contravened ss 22(f) and/or (h) of the FMCA by issuing the Incorrect Inflation Adjustment Notifications;
- B. an order under s 489 of the FMCA that AIA pay a pecuniary penalty to the Crown; and
- C. an order under s 493 of the FMCA that the pecuniary penalty be first applied to the FMA's actual costs in bringing the proceedings.

This statement of claim is filed on behalf of the Plaintiff by its solicitor **Nick Fraser Flanagan** whose address for service is at the offices of Meredith Connell, Level 5, 4 Graham Street, Auckland.

Documents for service on the Plaintiff may be left at that address for service or may be:

- (a) posted to the Solicitor at PO Box 90750, Victoria Street West, Auckland 1142; or
- (b) left for the Solicitor at a document exchange for direction to DX CP24063; or
- (c) transmitted to the Solicitor by facsimile to +64 9 336 7629; or
- (d) emailed to the solicitor at [litigation@mc.co.nz](mailto:litigation@mc.co.nz), with a copy sent to [nick.flanagan@mc.co.nz](mailto:nick.flanagan@mc.co.nz).

## Glossary of defined terms

<b>Age Limited Benefit</b>	A Benefit that terminates on an Attainment Date.
<b>AIA</b>	AIA New Zealand Limited and AIA International Limited.
<b>Anniversary Date</b>	The anniversary of the date on which a Policy was originally issued to a Customer.
<b>Anniversary Letter</b>	A letter sent by AIA to a Customer each year, approximately two months before a Policy's Anniversary Date.
<b>Attainment Date</b>	The date on which a Customer reaches an upper age limit.
<b>Benefit</b>	Type of cover provided to a customer and issued under a policy (e.g. trauma, total permanent disablement, life)
<b>Conduct and Culture Review</b>	A joint review by FMA and RBNZ into the conduct and culture of life insurance providers, one of which was AIA.
<b>CPI</b>	Consumer Price Index. The CPI increase is calculated by Statistics New Zealand each year and is stated as a percentage.
<b>CPI Error</b>	A change made by AIA in December 2014 which caused its Policy Administration System to incorrectly apply the Inflation Adjustment, instead of doing so in accordance with the terms of the Policy.
<b>Cover</b>	The sum insured under a Benefit.
<b>Cover Cessation Letters</b>	Letters sent by AIA to Customers advising that they were no longer entitled to Ongoing Payments.
<b>Customers</b>	Individuals or companies based in New Zealand with whom AIA enters into contracts of insurance.
<b>Final Anniversary Date</b>	The first Anniversary Date following either the passing of a specified number of years or the Attainment Date.
<b>FMCA</b>	Financial Markets Conduct Act 2013.
<b>Inflation Adjustment</b>	When AIA incorporates the CPI into its annual calculation of a Customer's Cover.
<b>Incorrect Inflation Adjustment Notification</b>	An incorrect statement in an Anniversary Letter Notification that the amount of the Cover and Premium stated in the Anniversary Letter was

	calculated in accordance with the terms of the Policy and set by application of the CPI.
<b>Issues</b>	The Termination Dates issue and the Inflation Adjustment issue.
<b>Mature Benefit</b>	A Benefit that has passed its Termination Date and no longer confers any rights or benefits on the Customer.
<b>Ongoing Payments</b>	Regular ongoing payments made in respect of a claim.
<b>Passback Letters</b>	Anniversary Letters sent by AIA to Customers who held Trauma Policies which stated that AIA had "automatically" added certain passback benefits to those Customers' Trauma Policies.
<b>Penultimate Anniversary Letter</b>	The Anniversary Letter issued to a Customer by AIA before the Customer's Policy's Attainment Date.
<b>Policy</b>	A contract of insurance between AIA and an individual or company based in New Zealand.
<b>Policy Document</b>	A document that contains the terms of a Policy in full.
<b>Policy Administration System</b>	A software solution which executes or can assist in the execution of certain insurance functions, including calculating and charging Premiums, calculating Cover, and issuing communications regarding both to Customers.
<b>Premium</b>	The payment a Customer must make under a Policy in exchange for Cover.
<b>Passback Benefits</b>	The passback benefits referred to in AIA's Passback Letters.
<b>Termination Date</b>	The date on which a Benefit terminates, as specified in the Policy.

Schedule 2

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY  
I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE

CIV-2021-404-1222

UNDER The Financial Markets Conduct Act 2013

BETWEEN FINANCIAL MARKETS AUTHORITY

Plaintiff

AND AIA NEW ZEALAND LIMITED

First Defendant

AND AIA INTERNATIONAL LIMITED

Second Defendant

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ADMISSION OF CAUSES OF ACTION AND FACTS  
[ ] AUGUST 2021

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McLeagh

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Auckland 1140

**TO:** the Registrar of the High Court at Auckland

**AND TO:** the plaintiff

**This document notifies you that —**

1. The defendants jointly and severally admit the causes of action pleaded in the plaintiff's amended statement of claim dated [ ] August 2021 ("**ASOC**"), as set out below. The defendants adopt the definitions in the ASOC.
2. The defendants admit the facts and allegations pleaded in the ASOC in their entirety.
3. This admission is filed pursuant to rr 15.15 and 15.16 of the High Court Rules 2016.

**First cause of action: Passback benefits**

4. As to the first cause of action, the defendants admit:
  - (a) the cause of action pleaded in paragraphs 64 to 66 of the ASOC; and
  - (b) that the plaintiff is entitled to a declaration that the defendants contravened ss 22(d) and/or (h) of the FMCA by issuing the Passback Letters dated on or after 1 April 2014.

**Second cause of action: Age Termination**

5. As to the second cause of action, the defendants admit:
  - (a) the cause of action pleaded in paragraphs 67 to 69 of the ASOC; and
  - (b) that the plaintiff is entitled to a declaration that the defendants contravened ss 22(c), (d), (f) and/or (h) of the FMCA by issuing the Penultimate Anniversary Letters dated on or after 1 April 2014; and
  - (c) that the plaintiff is entitled to a declaration that the defendants contravened ss 22(h) of the FMCA by issuing the Cover Cessation Letters dated on or after 1 April 2014.

**Third cause of action: Inflation Adjustments**

6. As to the third cause of action, the defendants admit:
  - (a) the cause of action pleaded in paragraphs 71 to 73 of the ASOC; and
  - (b) that the plaintiff is entitled to a declaration that the defendants contravened ss 22(f) and/or (h) of the FMCA by issuing the Incorrect Inflation Adjustment Notifications and the Subsequent Inflation Adjustment Notifications.

**DATED** this       day of August 2021

Schedule 3

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY  
I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE

CIV-2021-404-1222

UNDER The Financial Markets Conduct Act 2013

BETWEEN FINANCIAL MARKETS AUTHORITY

Plaintiff

AND AIA NEW ZEALAND LIMITED

First Defendant

AND AIA INTERNATIONAL LIMITED

Second Defendant

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JOINT MEMORANDUM OF COUNSEL REQUESTING PENALTY HEARING  
[ ] AUGUST 2021

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**Russell  
McLeagh**

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Auckland 1140

**May it please the Court:**

1. The parties have reached a resolution of these proceedings and entered into a settlement agreement dated [ ].

**Fixture sought**

2. As part of the settlement, the parties have agreed a recommended penalty to be submitted for the Court's approval.
3. Accordingly, the parties respectfully request a one-hour penalty fixture, noting that if their joint recommendations are approved by the Court that would resolve the proceeding in its entirety. The fixture is requested at the first available opportunity.
4. The parties also respectfully seek directions that:
  - (a) the plaintiff's submissions shall be filed 25 working days prior to the penalty hearing;
  - (b) the defendants' submissions shall be filed 10 working days prior to the penalty hearing.

Dated: [ ] August 2021

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N F Flanagan / C M Fleming  
Counsel for the Plaintiff

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S P Pope / W M Irving  
Counsel for the Defendants